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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO MEDINA,

Defendant and Appellant.

B261054

(Los Angeles County  
Super. Ct. No. KA024891)

APPEAL from an order of the Superior Court of Los Angeles County,  
William C. Ryan, Judge. Affirmed.

James A. Uyeda, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant and appellant Mario Medina appeals the trial court's denial of his motion for recall of his sentence and resentencing pursuant to Proposition 36, the Three Strikes Reform Act of 2012 (the Act). We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On March 10, 1995, a jury convicted Medina of first degree burglary (Pen. Code, § 459).<sup>1</sup> Because Medina had suffered two prior convictions for serious felonies, he was sentenced to a term of 25 years to life pursuant to the "Three Strikes" law, plus 10 years for enhancements. We affirmed the judgment on June 2, 1998, in an unpublished opinion.<sup>2</sup>

On June 26, 2014, Medina petitioned for recall of his sentence and resentencing under the Act, section 1170.126. On July 7, 2014, the trial court denied the petition with prejudice. It found Medina was ineligible for relief because his current conviction was for first degree burglary (§ 459), a serious felony. (§ 1192.7, subd. (c)(18).) Medina filed a notice of appeal from the July 7, 2014 order on May 4, 2015. We granted his subsequent petition for relief from default and failure to timely file his notice of appeal.

### **DISCUSSION**

After review of the record, appellant's court-appointed counsel filed an opening brief which raised no issues, and requested this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On September 14, 2015, we advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We have received no response.

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

<sup>2</sup> We take judicial notice of our unpublished opinion. (Evid. Code, §§ 459, subd. (a), 452, subd. (d).)

Because Medina's current conviction is for first degree burglary (§ 459), he is not eligible for a reduction of his sentence under section 1170.126. Section 1170.126, subdivision (e)(1), expressly states that an inmate is eligible for resentencing if he is serving a term for "a conviction of a felony or felonies that are *not defined as serious* and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7." (Italics added.) Section 1170.126, subdivision (a), states that its resentencing provisions "are intended to apply exclusively to persons presently serving an indeterminate term of imprisonment" pursuant to the Three Strikes law "whose sentence under [Proposition 36] would not have been an indeterminate life sentence." First degree burglary is defined as a serious felony by section 1192.7, subdivision (c)(18). Therefore, the trial court correctly ruled that Medina is statutorily ineligible for resentencing.

Medina attached to his petition various documents memorializing his accomplishments in prison over the years. While laudable, these materials are not relevant to the determination of whether he is statutorily eligible for resentencing.

We have examined the entire record and are satisfied appellant's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

## **DISPOSITION**

The order is affirmed.

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ALDRICH, Acting P. J.

We concur:

LAVIN, J.

JONES, J. \*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.